

## Red Flags Rule Compliance

### New Information

Effective August 1, 2009, the Federal Trade Commission (FTC) will begin enforcement of the Red Flags Rule, a regulation issued under the *Fair and Accurate Credit Transactions Act* (FACTA), which is a federal law designed to enhance protection against identity theft.

### Questions and Answers

#### **Q. What is a red flag?**

A. A red flag is a warning sign that identifies a suspicious pattern, practice, or activity that indicates the possible existence of identity theft.

#### **Q. Does the Red Flags Rule list the identity theft warning signs?**

A. The Red Flags Rule lists the following identity theft warning signs:

1. Alerts and notifications received from credit reporting agencies and third-party providers.
2. The submission of suspicious documents or suspicious identifying information.
3. Unusual or suspicious account activity.
4. A concern shared by a customer, identify theft victim, or law enforcement.

#### **Q. Who must comply with the Red Flags Rule?**

A. The FTC requires all creditors who have covered accounts to comply with the Red Flags Rule. A creditor is an entity that regularly grants loans, arranges for loans or the extension of credit, or makes credit decisions. Covered accounts are primarily personal, family, or household accounts requiring multiple payments or transactions, such as an automobile loan or an account which has a foreseeable risk of identity theft.

#### **Q. Does the Red Flags Rule apply to vehicle dealers?**

A. If a dealer extends auto credit to consumers or arranges auto credit for consumers, the rule will most likely apply.

#### **Q. What is required?**

A. The Red Flags Rule requires the development and maintenance of a written Identity Theft Prevention Program (ITPP) to detect, prevent, and reduce the possibility of identity theft. The ITPP must include the following four elements:

1. Reasonable policies and procedures to address the “red flags” of identity theft you may encounter in the day-to-day operation of your business.
2. A plan to detect the red flags you’ve identified. For example: if you’ve identified fake IDs as a red flag, then you must have procedures in place to detect possible fake, forged, or altered identification, such as training staff.

3. Appropriate actions to take when red flags are detected.
4. Identify the persons responsible for implementing and administering the program and approval of the program by your board of directors. If you don't have a board, approval of the ITPP is up to an appropriate senior-level employee. Your ITPP must also include plans for training staff and periodic re-evaluation to reflect new identity theft risks.

**Q. Will all ITPPs be the same?**

- A. While some businesses and organizations may need a comprehensive program that addresses a high risk of identity theft, others with a low risk of identity theft could create a more streamlined program.

**Q. What if our company outsources or subcontracts some of our work?**

- A. If you outsource or subcontract parts of your operation that would be covered by the Red Flags Rule, your ITPP must address how you'll monitor your contractors' compliance.

**Q. When is the deadline for implementation of the Red Flags Rule?**

- A. The implementation deadline was November 1, 2008, but the FTC is delaying enforcement of the Red Flags Rule until August 1, 2009, to give creditors and financial institutions additional time to develop and implement written identity theft prevention programs. However, this delay does not prevent other federal agencies from enforcing the Red Flags Rule after November 1, 2008, for institutions subject to their oversight.

**Q. Who enforces the Red Flags Rule?**

- A. The FTC, the federal bank regulatory agencies, and the National Credit Union Administration enforce the Red Flags Rule.

**Q. Are there any non-compliance consequences?**

1. Federal Administrative Action: The FTC can enact penalties up to \$2,500 per violation (*15 United States Code* §1681 (a)(2)(A)).
2. State Enforcement: States can impose up to \$1,000 per violation, plus attorneys' fees.
3. Civil Liability: Customers can also file civil suits to recover actual damages sustained due to a violation.

**Q. Where can I obtain a copy of the FTC guidelines?**

- A. A copy of the guidelines may be obtained at:  
<http://ftc.gov/bcp/edu/microsites/redflagsrule/more-about-red-flags.shtml>

<p><b>NOTE:</b> This is only a summary of the Red Flags Rule. Please refer to the FTC guidelines for more comprehensive information.</p>
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**Background**

*The Fair and Accurate Credit Transactions Act of 2003* (FACTA) amended the Fair Credit Reporting Act of 1970 to combat identity theft and requires joint federal agencies to develop and implement regulations. The regulations are intended to protect consumers by requiring businesses to develop a written ITPP plan. These businesses include those that extend credit or maintain consumer accounts allowing multiple payments or transactions or maintain accounts that have a reasonably foreseeable risk of customer identity theft.

**Distribution**

Notification that this memo is available online at **[dmv.ca.gov/pubs/olin/olin.htm](http://dmv.ca.gov/pubs/olin/olin.htm)** was made via e-mail alert in June 2009 to the following:

- All E-mail Alert subscribers.

**Contact**

For Red Flags Rule concerns or questions contact the FTC, at **[RedFlags@ftc.gov](mailto:RedFlags@ftc.gov)**.

A handwritten signature in black ink, appearing to read 'Mary Garcia', with a stylized, cursive script.

MARY GARCIA, Chief  
Occupational Licensing